

ORIGINAL OPEN MEETING AGENDA ITEM



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Phoenix, Arizona 85012
Attorneys for Gold Canyon Sewer Company

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF GOLD CANYON SEWER COMPANY,
AN ARIZONA CORPORATION, FOR A
DETERMINATION OF THE FAIR VALUE
OF ITS UTILITY PLANT AND PROPERTY
AND FOR INCREASES IN ITS RATES
AND CHARGES FOR UTILITY SERVICE
BASED THEREON.

DOCKET NO: SW-02519A-06-0015

GOLD CANYON SEWER COMPANY'S EXCEPTION
AND SUGGESTED CORRECTIONS TO
RECOMMENDED OPINION AND ORDER

Arizona Corporation Commission
DOCKETED

JUN 15 2007

DOCKETED BY	KK
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1 Pursuant to A.A.C. R14-3-110(B), Applicant, Gold Canyon Sewer Company
2 ("GCSC" or the "Company") submits an exception to the Recommended Opinion and
3 Order ("ROO") dated June 6, 2007. In addition, GCSC identifies what appear to be two
4 typographical errors and suggests what it believes are appropriate corrections.

5 SUMMARY OF EXCEPTION

- 6 • As a matter of law, GCSC asserts that the Commission does not have the legal
7 authority to levy a fine against GCSC in this rate case as stated in the
8 Company's legal filings relating to the prior statements by its former president,
9 Trevor Hill. The Company further asserts that the underlying factual record in
10 this case does not establish a basis for assessing a fine against GCSC. Despite
11 those legal and factual objections, the Company will reluctantly accept the
12 Commission's desire to not let it "walk away" from Mr. Hill's comments to
13 customers in late 2002 and early 2003. However, the Company respectfully
14 suggests that the responsibility it "must bear" should directly benefit the
community it serves, not the State's General Fund. Therefore, rather than a
fine as suggested by the ROO, GCSC suggests that it should be directed to
make a \$15,000 contribution equally split between the Gold Canyon Food
Bank and the Gold Canyon Citizens on Patrol.

15 GCSC'S EXCEPTION

16 GCSC certainly does not agree with everything in the ROO. For example, GCSC
17 continues to disagree with the methodology used by the Commission to determine a
18 return on equity as such methodology results in rates of return that are too low and
19 discourage investment. The Company also disagrees with the Commission's
20 disallowance of certain costs of transactions with affiliates and submits that the harsh
21 rhetoric and apparent establishment of a ban on such costs is not in the long-term interest
22 of Arizona's utility ratepayers. The Commission's position on these costs will have the
23 unfortunate effect of incenting utilities to either follow a more traditional approach or use
24 outside companies for associated utility services, instead of taking advantage of
25 economies of scale gained by using affiliates to perform such services. The result will be
26 increased costs for utility customers. Finally, GCSC has concerns over the length of time

1 this rate case has taken to reach a final decision.¹

2 Yet, GCSC does not challenge any aspect of the ROO except its objection to the
3 recommended fine for comments made nearly five years ago by its former president,
4 Trevor Hill. For the reasons set forth in prior pleadings, the Commission does not have
5 the legal authority to levy such fine against GCSC in this case based on the statements by
6 Mr. Hill. *See* GCSC' Legal Brief Regarding Prior Company Statements, September 13,
7 2007. evidence of reliance on Mr. Hill's prior statements was presented, nor was any
8 actual harm to ratepayers shown. No party identified any law, rule or order of the
9 Commission that was violated. No party recommended that the Commission impose a
10 fine on GCSC for the prior statements made by Mr. Hill, and no specific authority for a
11 fine in circumstances such as those presented in this rate case has been identified.
12 Instead, the ROO relies on the Commission's "broad regulatory authority" to justify a
13 fine against GCSC for Mr. Hill's prior statements. ROO at 38.

14 Even so, GCSC will accept the decision to make it "bear some responsibility" in
15 this rate case for Mr. Hill's unfortunate and poorly worded statements. However, the
16 Company respectfully suggests that its reprimand for Mr. Hill's choices should be in the
17 form of a direct contribution to the community it serves. This can be accomplished by
18 means of an order directing the Company to contribute \$15,000, split equally between the
19 Gold Canyon Food Bank and the Gold Canyon Citizens on Patrol. The underlying
20 circumstances support this approach as a better option for addressing Mr. Hill's prior

21
22 ¹ GCSC and undersigned counsel are cognizant of the fact that a one-month extension of
23 the time-clock was required due to counsel's injury last Fall. We have repeatedly
24 expressed our gratitude for the patience and understanding of the Commission, Judge
25 Nodes and the parties with respect to that incident. Nevertheless, the rates approved in
26 this case will still go into effect some 2 months after the Commission's time-clock
expired, assuming the rates go into effect July 1, 2007 as recommended in the ROO.
That delay has cost the Company more than \$300,000 under the ROO's recommended
revenue requirement.

1 statements. A fine by the Commission must be paid to the State's General Fund. See
2 ROO at 49, 5th Ordering Paragraph. But Mr. Hill's prior statements were directed to the
3 Company's ratepayers and the Gold Canyon community it serves. Because Mr. Hill's
4 statements were made to the Company's customers and community, the suggested
5 remedy should inure to the benefit of those customers and that community.

6 Towards the goal, GCSC has consulted with Pinal County Supervisor Sandi
7 Smith, and with Pat Prince, President of the Superstition Mountain Home Owners
8 Association, for the purpose of determining where the \$15,000 could best benefit the
9 community the Company serves. As a result of that effort, GCSC believes that a
10 contribution of \$15,000, split equally between the Gold Canyon Food Bank and the Gold
11 Canyon Citizens on Patrol, would benefit the community and its customers, and is a
12 remedy for Mr. Hill's unfortunate statements to which it would not object.² The Gold
13 Canyon Food Bank is an organization dedicated to fighting hunger and poverty by
14 donating food to needy individuals and families. The Gold Canyon Citizens on Patrol is
15 a volunteer arm of the Pinal County Sheriff's Office, whose volunteers patrol the
16 community of Gold Canyon. This group is in need of charitable funding to buy
17 equipment and uniforms. Clearly, \$15,000 in a small community like Gold Canyon will
18 go much further than the same payment into the General Fund of the State, which would
19 have little or no benefit to Gold Canyon.

20 Accordingly, GCSC respectfully urges the Commission to modify the ROO to
21 direct GCSC to make such a contribution. In order to assist the Commission in that
22

23 ² The Company's failure to object or otherwise challenge, in this specific docket, a
24 required contribution in the amount of \$15,000 split between the two suggested charities
25 is not, in any way, an agreement by GCSC that the Commission has authority to impose a
26 fine as recommended in the ROO or that the decision in this case should have any
precedential impact.

1 regard, the Company has included a form of amendment with this filing.³

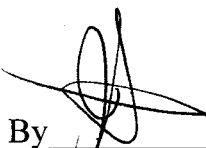
2 **GCSC'S SUGGESTED CORRECTIONS**

3 1. On page 34, line 9, "August 9, 2007" should be replaced with "August 9,
4 2006".

5 2. On page 48, line 9, the line item for the Main Extension Tariff has a
6 reference "(b)" which should be eliminated.

7 RESPECTFULLY SUBMITTED this 15th day of June, 2007.

8 FENNEMORE CRAIG, P.C.

9
10 

11 By

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Phoenix, Arizona 85012
Attorneys for Gold Canyon Sewer Company

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16 **ORIGINAL** and thirteen (13) copies of the
17 foregoing were filed
18 this 15th day of June 2007 to:

19 Docket Control
20 Arizona Corporation Commission
21 1200 W. Washington St.
22 Phoenix, AZ 85007
23

24 ³ The Company and undersigned counsel are acutely aware of the preference that
25 amendments to a recommended order come from the Commissioners or the Hearing
26 Division, not from the parties to the case. In this case, however, time is of the essence.
Consequently, the attached form of amendment is offered as a matter of convenience.

1 A **COPY** of the foregoing was **hand-delivered**
2 this 15th day of June 2007 to:

3 Chairman Mike Gleason
4 Arizona Corporation Commission
5 1200 W. Washington Street
6 Phoenix, AZ 85007

7 Commissioner Jeff Hatch-Miller
8 Arizona Corporation Commission
9 1200 W. Washington Street
10 Phoenix, AZ 85007

11 Commissioner Kristin K. Mayes
12 Arizona Corporation Commission
13 1200 W. Washington Street
14 Phoenix, AZ 85007

15 Commissioner William A. Mundell
16 Arizona Corporation Commission
17 1200 W. Washington Street
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19 Commissioner Gary Pierce
20 Arizona Corporation Commission
21 1200 W. Washington Street
22 Phoenix, AZ 85007

23 Ken Rosen
24 Aide to Commissioner Mike Gleason
25 Arizona Corporation Commission
26 1200 W. Washington Street
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Judge
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1110 W. Washington Street, Ste. 200
Phoenix, AZ 85007

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A **COPY** of the foregoing was **mailed**
this 15th day of June, 2007 to:

Andy Kurtz
MountainBrook Village at Gold Canyon
Ranch Association
5674 South Marble Drive
Gold Canyon, Arizona 85218

Mark A. Tucker
2650 E. Southern Ave.
Mesa, AZ 85204

By: Maria san jua

1923510.1/41452.015

THIS AMENDMENT:		
_____ Passed	_____ Passed as amended by _____	
_____ Failed	_____ Not Offered	_____ Withdrawn

**PROPOSED AMENDMENT # _____
TO RECOMMENDED OPINION AND ORDER**

DATE PREPARED: _____

COMPANY Gold Canyon Sewer Company

AGENDA ITEM _____

DOCKET NO. SW-02519A-06-0015

OPEN MEETING DATE: June 26, 2007

Page 43, lines 1-11:

would result from the then-proposed plant upgrade, we find that a penalty in the amount of \$15,000 should be imposed on Gold Canyon Sewer Company. This penalty is based on \$5,000 per year for the approximately three-year period from when the misleading statements were made to the time of the Company's filing of the rate application seeking recovery of the treatment plant improvements in rates. In making this finding, we wish to make clear that we are not reducing the reasonable return on fair value rate base that was established above in this rate order. Rather, we have reached the conclusion that a public service corporation may not simply walk away from the representations to customers made by the company's highest officer, especially when the statements involve future rate impacts associated with the company's actions. In other words, Gold Canyon must bear some responsibility for the promises made by its former president, even if the Company contends after-the-fact that the statements were made in error.

REPLACE WITH

would result from the then-proposed plant upgrade, we find that a contribution in the amount of \$15,000, split equally between the Gold Canyon Food Bank and Gold Canyon Citizens on Patrol, should be required of Gold Canyon Sewer Company. The total amount of this required contribution is based on \$5,000 per year for the approximately three-year period from when the misleading statements were made to the time of the Company's filing of the rate application seeking recovery of the treatment plant improvements in rates. In requiring this contribution, we wish to make clear that we are not reducing the reasonable return on fair value rate base that was established above in this rate order. Rather, we have reached the conclusion that a public service corporation

may not simply walk away from the representations to customers made by the company's highest officer, especially when the statements involve future rate impacts associated with the company's actions. In other words, Gold Canyon must bear some responsibility for the promises made by its former president, even if the Company contends after-the-fact that the statements were made in error. The required contribution will provide a benefit to the Company's customers and the community in which they reside.

Page 47, lines 4-9

41. Based on the representations made by Mr. Hill in 2002 and 2003 that no increase in rates would result from the then-proposed plant upgrade, we find that a penalty in the amount of \$15,000 should be imposed on Gold Canyon Sewer Company. This penalty is based on \$5,000 per year for the approximately three-year period from when the misleading statements were made to the time of the Company's filing of the rate application seeking recovery of the treatment plant improvements in rates.

REPLACE WITH

41. Based on the representations made by Mr. Hill in 2002 and 2003 that no increase in rates would result from the then-proposed plant upgrade, we find that Gold Canyon Sewer Company should be required to make a \$15,000 contribution, split equally between the Gold Canyon Food Bank and Gold Canyon Citizens on Patrol. The total amount of this required contribution is based on \$5,000 per year for the approximately three-year period from when the misleading statements were made to the time of the Company's filing of the rate application seeking recovery of the treatment plant improvements in rates.

Page 49, lines 1-4.

IT IS FURTHER ORDERED that Gold Canyon Sewer Company shall pay a \$15,000 penalty by either cashiers check or money order, within 30 days of the effective date of this Decision, payable to the "State of Arizona" and presented to the Arizona Corporation Commission's business office for deposit to the general fund for the State of Arizona.

REPLACE WITH

IT IS FURTHER ORDERED that Gold Canyon Sewer Company shall make a contribution in the amount of \$15,000, split equally between the Gold Canyon Food Bank and Gold Canyon Citizens on Patrol, within 30 days of the effective date of this Decision, and shall file in the docket evidence that such contribution was made within 5 days thereafter.